



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1998

Mr. James David Cross
Compliance Officer
Access and Equity Office
Houston Community College System
320 Jackson Hill
P.O. Box 7849
Houston, Texas 77270-7849

OR98-0518

Dear Mr. Cross:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 112896.

The Houston Community College System (the "system") received a request for "records pertaining to the History Position ID E3073/136011, number JVN3457, including any applicable EEOC complaints and/or grievances," and "a copy of all the investigative reports, findings, and the final recommendations." You assert that the submitted information is excepted from required public disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.¹

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

¹We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The system has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The system must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you have submitted a petition filed by the requestor against the system and another individual in district court in Harris County, Texas. Therefore, we find that the system has met the first prong of the section 552.103(a) test. Upon review of the requested information, we find it is related to the pending litigation. Therefore, because you have made the requisite showing that litigation is pending and that the requested information relates to that pending litigation, you may withhold the requested information under section 552.103(a).

We note, however, that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We have marked a letter between the system and the requestor which must be released to her. (See blue tag). Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Additionally, the applicability of section 552.103(a) ends once the litigation has been concluded. However, you may not release information made confidential by law, even after the litigation has concluded.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 112896

Enclosures: Submitted documents

cc: Ms. Michelle Anne Thorpe
7150 Clayton
Houston, Texas 77061
(w/o enclosures)